

MEMORANDUM IN SUPPORT OF PROPOSED SUBSTITUTE CHARTER AMENDMENT

TO: Minneapolis Charter Commission Public Safety Work Group

FROM: Barry Clegg 

CC: Minneapolis Charter Commissioners, Casey Carl, City Clerk

DATE: October 29, 2020

RE: Clegg Proposed Substitute Charter Amendment

1. Background.

On June 26, 2020, the Minneapolis City Council proposed an amendment (the "Council Amendment") to the Minneapolis City Charter relating to public safety that (i) eliminated the minimum funding and staffing requirements for the police department set forth in Section 7.3(c) of the Charter; (ii) eliminated the police department as a Charter department; (iii) eliminated the existing "complete power" (Section 7.3(a)) of the Mayor over the law enforcement function and (iv) created a new Charter department, the Department of Public Safety and Violence Prevention, which may, or may not, in turn establish a Division of Law Enforcement Services.

The Council Amendment was submitted to the Charter Commission for its review in accordance with Minnesota Statute 410.12 (the "Statute"). The Charter Commission held 2 public hearings and formed a Public Safety Work Group to review the Council Amendment. On August 5, 2020, the Charter Commission advised the Council that additional time was needed for review and that the Charter Commission was extending the period for its review by 90 days in accordance with the Statute. The Work Group continued to meet, conducted its own research and consulted and interviewed the Mayor, multiple Council Members, the Chief of the police department and multiple other employees of the City with expertise and responsibility in providing for public safety.

The Work Group will report back to the full Charter Commission at its November 4 meeting. After hearing the findings and recommendations of the Work Group, the Charter Commission must (i) approve the Council Amendment; (ii) reject the Council Amendment; or (iii) propose a substitute amendment.

For the reasons set forth below, I am proposing that the Work Group consider the attached substitute amendment, which eliminates the minimum funding and staffing requirements in Section 7.3(c) of the Charter but otherwise makes no changes.

2. The funding and staffing minimums in Section 7.3(c) do not belong in the Charter, they are a barrier to change, and their elimination has broad support.

(a) Appropriateness. The Charter's minimum staffing and funding provisions for the police department were not included in the City's original 1920 Charter. They were added by amendment in 1961 after being proposed by the then Council President and passed with the considerable help of the police union.

There are 14 Charter departments (Section 7.2 of the Charter). While the Charter does mandate funding for "adequate" staffing for some departments (for example, the fire department), the Charter does not specify any level of minimum staffing or funding for any department other than the police department. Rather, those decisions are left to the Mayor and the Council in setting the budget and, if the executive and legislative branches so agree, to ordinance.

In my view, minimum funding and staffing specifics do not belong in the Charter and we would not likely include such provisions if we were drafting a Charter from scratch. Indeed this Commission, when drafting the Plain Language Charter, took care to move subjects more appropriate for ordinance out of the Charter entirely and the Council adopted more than 50 ordinances to replace provisions removed from the Charter.

I know that some may prefer to keep the funding and staffing provisions because they are concerned about what our current Council might do in the absence of specific minimum requirements. The remedy for unhappy voters though is not to cover every minute detail of employee staffing in the Charter, the remedy for voters is to elect Council Members who will implement policy that the voters want.

(b) Barrier to change. The current minimum staffing and funding provisions are a barrier to change. Moving some of the functions of the police department to other departments with corresponding adjustments in staffing could run afoul of the Charter. In fact, the City is in litigation over this issue right now. Removing the minimums will eliminate this barrier and leave decisions on staffing and funding to the executive and legislative branches.

(c) Support. The Council Amendment proposes removing the 7.3(c) minimums, and the Mayor told us that he agreed these provisions should go. This was the extent of the consensus between the Mayor and the Council and I think the Charter Commission should recommend that the voters make the final decision.

3. The police department should not be eliminated as a Charter department.

The Council Amendment eliminates the police department as a charter department. While eliminating the Charter status of a department doesn't necessarily mean a department ceases to exist, the fact that the Council Amendment contemplates a **possible** Division of Law Enforcement Services under the Proposed Department of Public Safety and Violence Prevention, demonstrates the Council intent to ultimately eliminate the police department entirely.

Although the Council Amendment only provides that the Department of Public Safety and Violence Prevention **may** have a Division of Law Enforcement Services, most Council Members, either publicly or privately, have acknowledged that a law enforcement function will be required. Indeed, members of the City Attorney's office testified as to the many functions that can only be performed by licensed peace officers (making arrests, serving warrants, carrying a weapon, to name a few). To me, it seems either misleading or like bad drafting to use "may", then with a wink and a nod to say a "must" is what is intended.

So, how will a Division of Law Enforcement Services be different from the police department? Minnesota Supreme Court precedent has established that elimination of a municipal bargaining unit constitutes an unfair labor practice under PELRA. And the City Attorney's office opined that the presumptive bargaining representative of any Division of Law Enforcement Services would be the Police Officers Federation of Minneapolis. So we'll have the same union, the same contract and many of the same officers. Calling them something other than police and changing the color of their uniforms is a transparent sleight of hand that won't fool anyone. We're going to have a significant group of employees performing a law enforcement function. Changing their job title does not move us any closer to reform. We should call them what they are, police officers, and keep the Charter department.

4. Removing the Mayor's "complete power" over the police department is a bad idea.

Section 7.3(a) of the Charter provides that the Mayor has "complete power" over the police department. The Council proposed an amendment in 2018 giving the Council legislative authority over the police (and, confusingly, leaving the Mayor with similar, possibly conflicting authority). The new Council Amendment eliminates the "complete power" language and has the Division of Law Enforcement Services reporting to a department head, the head of the Department of Public Safety and Violence Prevention. The head of the Department of Public Safety and Violence Prevention would be subject to the authority of both the Mayor and the Council.

In 2018, in response to the Council proposal regarding the police department, the Charter Commission researched comparable jurisdictions to determine how police departments are managed by our peer cities. We only looked at mayor/council systems (not city manager or police commission systems). In virtually every instance, mayors have operational control over police departments. This makes practical sense, since police departments respond to emergencies and a clear, unified line of command is important to insure a prompt and appropriate response.

In 2018, in response to a Council request, the City Attorney's office reviewed the Charter authority of the mayor and the Council over the police department and concluded "The City Council has the same authority over the Police Department as it does over all City departments, its authority to legislate and set enterprise policies, goals and strategic direction, hold hearings and require accountability of and reports and information from the Police Department." The City Attorney's office gave substantially the same advice this year when interviewed by the Work Group. The Council apparently disagrees with their own lawyers on this.

It is also concerning to me that the Council Amendment contemplates that the head of the Division of Law Enforcement Services reports to a staff member (the head of the Department of Public Safety and Violence Prevention) and not an elected official. The law enforcement function, whatever it is called, needs to be directly managed by an elected official to insure accountability. In my opinion, it would be a mistake to delegate this to staff.

It is hard for me to see how moving authority from the Mayor to the Council and moving management of the law enforcement function to staff increases accountability or efficiency or advances reform in any meaningful way.

5. Creating a city department to prevent violence does not require Charter change.

I support creating a City department, whatever the name, focused on public safety and violence prevention. This does not require Charter change. The Charter specifically authorizes the Mayor and Council to create departments as they see fit (Section 7.2(a)(15) of the Charter). These departments would not be Charter departments, so would not require the voters to consent to their formation or termination – all that would be up to the Mayor and the Council. A department can always be made a Charter department down the road, if it is successful in accomplishing its goals and mission.

6. Looking at the Charter Commission's standards for considering proposals to amend the Charter.

The Charter Commission recently adopted standards to use in evaluating proposed amendment to the Charter (including this substitute). They are:

(a) Is the amendment germane to the Charter? The substitute amendment I am proposing merely removes existing Charter language. It is clearly germane. In fact, I believe the language being removed is **not** germane to the Charter and is more appropriate for ordinance or policy.

(b) Is the amendment well considered? The substitute amendment incorporates a portion of the Council Amendment and also draws heavily from the substitute proposed earlier by former Commissioner Giraud- Isaacson, who I thank for his hard work. There have been public hearings (on both the Council Amendment and the amendment proposed by Commissioner Giraud-Isaacson) and plenty of opportunity for input during the Work Group's process. The substitute is well considered.

(c) Is the amendment clear and specific? Yes – the clarity and specificity of the substitute amendment are self-evident.

(d) Does the proposed amendment interfere with or take away any rights of voters? If the substitute is approved, the voters would no longer be able to weigh in on the size or funding of the police department. But (i) this is a provision that is more appropriate for ordinance or policy and should never have been included in the Charter in the first place; and (ii) the voters will make this decision for themselves when they vote on the proposed substitute.

(e) Is the proposed amendment consistent with state law? Yes – there is no state law requiring that police staffing and funding be specified in a charter.

(f) Is the proposed amendment necessary to accomplish its intended objective? Yes – see Barrier to Change analysis above (Section 2). While I believe that many of the changes in the Council Amendment **can** be accomplished without Charter change, the changes contemplated by the substitute amendment cannot.

7. Conclusion.

For all the reasons set forth above, I propose the Charter Commission respond to the Council Amendment in a timely fashion with a proposal to substitute with the attached amendment. I look forward to discussing at our meeting on November 2.

DRAFT

Clegg

Amending Article VII of the City Charter relating to Administration pertaining to the Police Department.

§ 7.3. - Police.

- (a) **Police department.** The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).
- (1) **Police chief.**
 - (A) **Appointment.** The Mayor nominates and the City Council appoints a police chief under section 8.4(b).
 - (B) **Term.** The chief's term is three years.
 - (C) **Civil service.** The chief serves in the unclassified service, but with the same employee benefits (except as to hiring and removal) as an officer in the classified service. If a chief is appointed from the classified service, then he or she is treated as taking a leave of absence while serving as chief, after which he or she is entitled to return to his or her permanent grade in the classified service. If no vacancy is available in that grade, then the least senior employee so classified returns to his or her grade before being so classified.
 - (D) **Public health.** The chief must execute the City Council's orders relating to the preservation of health.
- (2) **Police officers.** Each peace officer appointed in the police department must be licensed as required by law. Each such licensed officer may exercise any lawful power that a peace officer enjoys at common law or by general or special law, and may execute a warrant anywhere in the county.
- (b) **Temporary police.** The Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one week. Each such officer must be a licensed peace officer.
- (c) **Funding.** The City Council ~~must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually to finance the operation of the police department.~~ This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).